

ASSEMBLY BILL

No. 1306

Introduced by Assembly Member Leno

February 21, 2003

An act to amend Section 1203.1b of, and to add Section 1203.95 to, the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1306, as introduced, Leno. Probation: transfer of cases.

Existing law sets forth procedures under which a person released upon probation may be transferred to the care and custody of the probation officer of another county. Existing law also authorizes the court to order a probationer, pursuant to specified procedures, to pay all or a portion of the reasonable cost of processing a transfer of probation to another county. Existing law, added by an initiative measure that permits amendment only by roll call vote of $\frac{2}{3}$ of the membership of both houses of the Legislature, provides for special terms and conditions of probation in cases involving possession of controlled substances and related charges.

This bill would provide special probation transfer procedures, including a specific limitation on the ability of the court in a county to refuse to accept a transfer of jurisdiction over a probationer, for people on probation under the initiative provisions relating to controlled substance possession and similar charges. Once transferred, the probationer would be under the jurisdiction of the court in the new county for all purposes, including probation supervision and treatment.

By providing a special probation transfer process applicable only to these controlled substance offenders, this bill would amend an initiative requiring a $\frac{2}{3}$ vote of both houses of the Legislature. By requiring a

county to accept a transfer of probation in certain circumstances, obligating that county to provide supervision and treatment, and to address violations of probation with prosecution and other resources, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.1b of the Penal Code is amended
2 to read:
3 1203.1b. (a) In any case in which a defendant is convicted of
4 an offense and is the subject of any preplea or presentence
5 investigation and report, whether or not probation supervision is
6 ordered by the court, and in any case in which a defendant is
7 granted probation or given a conditional sentence, the probation
8 officer, or his or her authorized representative, taking into account
9 any amount that the defendant is ordered to pay in fines,
10 assessments, and restitution, shall make a determination of the
11 ability of the defendant to pay all or a portion of the reasonable cost
12 of any probation supervision or a conditional sentence, of
13 conducting any preplea investigation and preparing any preplea
14 report pursuant to Section 1203.7, of conducting any presentence
15 investigation and preparing any presentence report made pursuant
16 to Section 1203, and of processing a jurisdictional transfer
17 pursuant to Section 1203.9 or of processing a request for interstate
18 compact supervision pursuant to Sections 11175 to 11179,
19 inclusive, whichever applies. The reasonable cost of these services
20 and of probation supervision or a conditional sentence shall not



1 exceed the amount determined to be the actual average cost
2 thereof. A payment schedule for the reimbursement of the costs of
3 preplea or presentence investigations based on income shall be
4 developed by the probation department of each county and
5 approved by the presiding judge of the superior court. The court
6 shall order the defendant to appear before the probation officer, or
7 his or her authorized representative, to make an inquiry into the
8 ability of the defendant to pay all or a portion of these costs. The
9 probation officer, or his or her authorized representative, shall
10 determine the amount of payment and the manner in which the
11 payments shall be made to the county, based upon the defendant's
12 ability to pay. The probation officer shall inform the defendant that
13 the defendant is entitled to a hearing, that includes the right to
14 counsel, in which the court shall make a determination of the
15 defendant's ability to pay and the payment amount. The defendant
16 must waive the right to a determination by the court of his or her
17 ability to pay and the payment amount by a knowing and
18 intelligent waiver.

19 (b) When the defendant fails to waive the right provided in
20 subdivision (a) to a determination by the court of his or her ability
21 to pay and the payment amount, the probation officer shall refer
22 the matter to the court for the scheduling of a hearing to determine
23 the amount of payment and the manner in which the payments
24 shall be made. The court shall order the defendant to pay the
25 reasonable costs if it determines that the defendant has the ability
26 to pay those costs based on the report of the probation officer, or
27 his or her authorized representative. The following shall apply to
28 a hearing conducted pursuant to this subdivision:

29 (1) At the hearing, the defendant shall be entitled to have, but
30 shall not be limited to, the opportunity to be heard in person, to
31 present witnesses and other documentary evidence, and to
32 confront and cross-examine adverse witnesses, and to disclosure
33 of the evidence against the defendant, and a written statement of
34 the findings of the court or the probation officer, or his or her
35 authorized representative.

36 (2) At the hearing, if the court determines that the defendant has
37 the ability to pay all or part of the costs, the court shall set the
38 amount to be reimbursed and order the defendant to pay that sum
39 to the county in the manner in which the court believes reasonable
40 and compatible with the defendant's financial ability.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the determination of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall set payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9 *or* 1203.95, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer

1 for a review of the defendant's financial ability to pay or the
2 rendering court to modify or vacate its previous judgment on the
3 grounds of a change of circumstances with regard to the
4 defendant's ability to pay the judgment. The probation officer and
5 the court shall advise the defendant of this right at the time of
6 rendering of the terms of probation or the judgment.

7 (g) All sums paid by a defendant pursuant to this section shall
8 be allocated for the operating expenses of the county probation
9 department.

10 (h) The board of supervisors in any county, by resolution, may
11 establish a fee for the processing of payments made in installments
12 to the probation department pursuant to this section, not to exceed
13 the administrative and clerical costs of the collection of those
14 installment payments as determined by the board of supervisors,
15 except that the fee shall not exceed fifty dollars (\$50).

16 (i) This section shall be operative in a county upon the adoption
17 of an ordinance to that effect by the board of supervisors.

18 SEC. 2. Section 1203.95 is added to the Penal Code, to read:

19 1203.95. (a) Notwithstanding the provisions of Section
20 1203.9, whenever any person is granted probation under Section
21 1210.1, jurisdiction over the case may be transferred at the
22 discretion of the sentencing court to the court in any other county
23 in which the person resides permanently, which shall mean
24 residing with the stated intention to remain for the duration of
25 probation.

26 (b) In the event of a transfer of jurisdiction over a case pursuant
27 to subdivision (a), the court in the receiving county shall be given
28 an opportunity to determine, by court hearing, whether the person
29 does reside in that county and has stated the intention to remain for
30 the duration of probation. Only if the receiving court finds that the
31 person either does not reside in that county or does not state an
32 intention to remain in that county for the duration of probation,
33 may the court in the receiving county refuse to accept the transfer.

34 (c) An order of transfer made pursuant to subdivision (a) shall
35 contain an order requiring the probationer to report to the
36 probation officer of the receiving county and an order for
37 reimbursement of reasonable costs for processing the transfer to
38 be paid by the sending county in accordance with Section 1203.1b.
39 A copy of the orders and probation reports shall be transmitted to
40 the court and probation officer of the receiving county within two

1 weeks of the finding by that county that the person does
2 permanently reside in or has permanently moved to that county,
3 and thereafter, the receiving court shall have entire jurisdiction
4 over the case, including, but not limited to, probation supervision
5 and treatment.

6 (d) In the event of a transfer of jurisdiction over a case pursuant
7 to subdivision (a), a certified copy of the file may be made and
8 forwarded to the county where the person resides and shall include
9 the name and address of the legal residence of the person. A
10 certified copy shall be deemed to be the same as the original. The
11 original court file may be kept in the files of the transferring
12 county.

13 SEC. 3. Notwithstanding Section 17610 of the Government
14 Code, if the Commission on State Mandates determines that this
15 act contains costs mandated by the state, reimbursement to local
16 agencies and school districts for those costs shall be made pursuant
17 to Part 7 (commencing with Section 17500) of Division 4 of Title
18 2 of the Government Code. If the statewide cost of the claim for
19 reimbursement does not exceed one million dollars (\$1,000,000),
20 reimbursement shall be made from the State Mandates Claims
21 Fund.

